

FIDIC

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

SHORT FORM of Contract

AGREEMENT

GENERAL CONDITIONS

RULES FOR ADJUDICATION

NOTES FOR GUIDANCE

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The ultimate decision on the form and content of the document rests with FIDIC.

FOREWORD

These Conditions of Contract have been prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and are recommended for engineering and building work of relatively small capital value. However, depending on the type of work and the circumstances, the Conditions may be suitable for contracts of greater value. They are considered most likely to be suitable for fairly simple or repetitive work or work of short duration without the need for specialist sub-contracts.

The main aim has been to produce a straightforward flexible document which includes all essential commercial provisions and which may be used for all types of engineering and building work with a variety of administrative arrangements. Under the usual arrangements for this type of contract, the Contractor constructs the Works in accordance with design provided by the Employer or by his representative (if any). However, this form may also be suitable for contracts which include, or wholly comprise, contractor-designed civil, mechanical and/or electrical works.

In addition, the Employer has a choice of valuation methods. Furthermore, although there is no reference to an impartial Engineer, the Employer may appoint an independent Engineer to act impartially, should he wish to do so.

The form is recommended for general use, though modifications may be required in some jurisdictions. FIDIC considers the official and authentic text to be the version in the English language.

The intention is that all necessary information should be provided in the Appendix to the Agreement, the latter incorporating the tenderer's offer and its acceptance in one simple document. The General Conditions are expected to cover the majority of contracts. Nevertheless, users will be able to introduce Particular Conditions if they wish, to cater for special cases or circumstances. The General Conditions and the Particular Conditions will together comprise the Conditions governing the rights and obligations of the parties.

To assist in the preparation of tender documents using these Conditions, Notes for Guidance are included. These Notes will not become one of the documents forming the Contract. Finally, applicable Rules for Adjudication are also included. The attention of users is drawn to the FIDIC publication "Tendering Procedure", which presents a systematic approach to the selection of tenderers and the obtaining and evaluation of tenders.

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Agreement

The Employer is Mosta Parish with office at Uffiċċju Parrokkjali, 1, Triq il-Bażilika, Il-Mosta

The Contractor is _____ of

The Employer desires the execution of certain Works known as Redevelopment of Oratorju Qalb ta' Ġesù - Phase 1 Civil Works

OFFER

The Contractor has examined the documents listed in the Appendix which forms part of this Agreement and offers to execute the Works in conformity with the Contract for the sum of

_____ (in words)

_____ (in figures) (_____)

or such other sum as may be ascertained under the Contract.

This offer, of which the Contractor has submitted two signed originals, may be accepted by the Employer by signing and returning one original of this document to the Contractor before

_____ (date)

The Contractor understands that the Employer is not bound to accept the lowest or any offer received for the Works.

Signature: _____

Date: _____

Name: _____

Authorised to sign on behalf of
(organization name):

Capacity: _____

ACCEPTANCE

The Employer has by signing below, accepted the Contractor's offer and agrees that in consideration for the execution of the Works by the Contractor, the Employer shall pay the Contractor in accordance with the Contract. This Agreement comes into effect on the date when the Contractor receives one original of this document signed by the Employer.

Signature: _____

Date: _____

Name: _____

Authorised to sign on behalf of
(organization name): _____

Capacity: _____

APPENDIX

This Appendix forms part of the Agreement.

[Note: with the exception of the items for which the Employer's requirements have been inserted, the Contractor shall complete the following information before submitting his offer.]

Item	Sub-Clause	Data
Documents forming the Contract listed in the order of priority . . .	1.1.1	
Document		Document Identification
(a) The Agreement		
(b) Particular Conditions		
(c) General Conditions		
(d) The Specification		
(e) The Drawings		
(f) The bill of quantities		
(g) Condition survey		
(h) Ground investigation report		
Time for Completion	1.1.9	210 days
Law of the Contract	1.4	Law of Malta
Language	1.5	English
Provision of Site	2.1	On the Commencement Date _____
Authorised person	3.1	Fr Sebastian Caruana
Name and address of Employer's representative (if known)	3.2	<u>A10/140 Architect/ contractor</u> administrator BEZZINA & COLE, Architects & Engineers 52, Triq Sir Augustus Bartolo, Ta' Xbiex XBX1099, Malta
Performance security (if any):		
Amount	4.4	<u>10% of contract value</u>
Form	4.4	<u>Bank guarantee</u> (details)

Item	Sub-Clause	Data
Programme:		
Time for submission	7.2	Within 14 days of the Commencement Date.
Form of programme	7.2	Specification Clause <u>A32/210 Programme</u> in the form of a Gantt chart.
Amount payable due to failure to complete	7.4	€500 per day up to a maximum of 10% of sum stated in the Agreement
Period for notifying defects	9.1 & 11.5	365 days* calculated from the date stated in the notice under Sub-Clause 8.2
Variation procedure		
Daywork rates	10.2	<u>Refer to Bill of Quantities</u>
Valuation of the Works*		
Remeasurement with tender bill of quantities	11.1	<u>Refer to Bill of Quantities</u>
Percentage of value of Materials and Plant	11.2	Materials _____ 80%*
		Plant _____ 90%*

Item	Sub-Clause	Data
Percentage of retention	11.3	5%
Currency of payment	11.7	<u>Euro (€)</u>
Rate of interest	11.8	8% per annum
Insurances	14.1	
Type of cover	Amount of cover	
The Works, Materials, Plant and fees	The sum stated in the Agreement plus 15%	
Contractor's Equipment	Full replacement cost	
Third Party injury to persons and damage to third party property	<u>Seven hundred and fifty thousand Euro (€750,000)</u>	
Damage to the Employer's property (Own Surrounding Property)	<u>One million Euro (€1,000,000)</u>	
Workers (Employers' Liability)	Two million and five hundred thousand Euro (€2,500,000) per occurrence, and Five million Euro (€5,000,000) in the aggregate.	
Arbitration		
Rules	15.3	Malta Arbitration Centre Rules*
Appointing authority	15.3	Malta Arbitration Centre
Place of Arbitration	15.3	The Country* <u>Malta</u>

General Conditions

1 General Provisions

1.1 Definitions

In the Contract as defined below, the words and expressions defined shall have the following meanings assigned to them, except where the context requires otherwise:

The Contract

1.1.1 **"Contract"** means the Agreement and the other documents listed in the Appendix.

1.1.2 **"Specification"** means the document as listed in the Appendix, including Employer's requirements in respect of design to be carried out by the Contractor, if any, and any Variation to such document.

1.1.3 **"Drawings"** means the Employer's drawings of the Works as listed in the Appendix, and any Variation to such drawings.

Persons

1.1.4 **"Employer"** means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the Contractor) any assignee.

1.1.5 **"Contractor"** means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the Employer) any assignee.

1.1.6 **"Party"** means either the Employer or the Contractor.

Dates, Times and Periods

1.1.7 **"Commencement Date"** means the date 14 days after the date the Agreement comes into effect or any other date agreed between the Parties.

1.1.8 **"day"** means a calendar day.

1.1.9 **"Time for Completion"** means the time for completing the Works as stated in the Appendix (or as extended under Sub-Clause 7.3), calculated from the Commencement Date.

Money and Payments

1.1.10 **"Cost"** means all expenditure properly incurred (or to be incurred) by the Contractor, whether on or off the Site, including overheads and similar charges, but does not include profit.

Other Definitions

1.1.11 **"Contractor's Equipment"** means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials or Plant.

1.1.12 **"Country"** means the country in which the Site is located.

1.1.13 **"Employer's Liabilities"** means those matters listed in Sub-Clause 6.1.

1.1.14 **"Force Majeure"** means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.

1.1.15 **"Materials"** means things of all kinds (other than Plant) intended to form or forming part of the permanent work.

1.1.16 **"Plant"** means the machinery and apparatus intended to form or forming part of the permanent work.

1.1.17 **"Site"** means the places provided by the Employer where the Works are to be executed, and any other places specified in the Contract as forming part of the Site.

1.1.18 **"Variation"** means a change to the Specification and /or Drawings (if any) which is instructed by the Employer under Sub-Clause 10.1.

1.1.19 **"Works"** means all the work and design (if any) to be performed by the Contractor including temporary work and any Variation.

1.2 Interpretation

Words importing persons or parties shall include firms and organisations. Words importing singular or one gender shall include plural or the other gender where the context requires.

1.3 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary instructions to the Contractor, and the priority of the documents shall be in accordance with the order as listed in the Appendix.

1.4 Law

The law of the Contract is stated in the Appendix.

1.5 Communications

Wherever provision is made for the giving or issue of any notice, instruction, or other communication by any person, unless otherwise specified such communication shall be written in the language stated in the Appendix and shall not be unreasonably withheld or delayed.

1.6 Statutory Obligations

The Contractor shall comply with the laws of the countries where activities are performed. The Contractor shall give all notices and pay all fees and other charges in respect of the Works.

2 The Employer

2.1 Provision of Site

The Employer shall provide the Site and right of access thereto at the times stated in the Appendix.

2.2 Permits and Licences

The Employer shall, if requested by the Contractor, assist him in applying for permits, licences or approvals which are required for the Works.

2.3 Employer's Instructions

The Contractor shall comply with all instructions given by the Employer in respect of the Works including the suspension of all or part of the Works.

2.4 Approvals

No approval or consent or absence of comment by the Employer or the Employer's representative shall affect the Contractor's obligations.

3 Employer's Representatives

3.1 Authorised Person

One of the Employer's personnel shall have authority to act for him. This authorised person shall be as stated in the Appendix, or as otherwise notified by the Employer to the Contractor.

3.2 Employer's Representative

The Employer may also appoint a firm or individual to carry out certain duties. The appointee may be named in the Appendix, or notified by the Employer to the Contractor from time to time. The Employer shall notify the Contractor of the delegated duties and authority of this Employer's representative.

4 The Contractor

4.1 General Obligations

The Contractor shall carry out the Works properly and in accordance with the Contract. The Contractor shall provide all supervision, labour, Materials, Plant and Contractor's Equipment which may be required. All Materials and Plant on Site shall be deemed to be the property of the Employer.

4.2 Contractor's Representative

The Contractor shall submit to the Employer for consent the name and particulars of the person authorised to receive instructions on behalf of the Contractor.

4.3 Subcontracting

The Contractor shall not subcontract the whole of the Works. The Contractor shall not subcontract any part of the Works without the consent of the Employer.

4.4 Performance Security

If stated in the Appendix, the Contractor shall deliver to the Employer within 14 days of the Commencement Date a performance security in a form and from a third party approved by the Employer.

5 Design by Contractor

5.1 Contractor's Design

The Contractor shall carry out design to the extent specified, as referred to in the Appendix. The Contractor shall promptly submit to the Employer all designs prepared by him. Within 14 days of receipt the Employer shall notify any comments or, if the design submitted is not in accordance with the Contract, shall reject it stating the reasons. The Contractor shall not construct any element of the permanent work designed by him within 14 days after the design has been submitted to the Employer or where the design for that element has been rejected. Design that has been rejected shall be promptly amended and resubmitted. The Contractor shall resubmit all designs commented on taking these comments into account as necessary.

5.2 Responsibility for Design

The Contractor shall remain responsible for his tendered design and the design under this Clause, both of which shall be fit for the intended purposes defined in the Contract and he shall also remain responsible for any infringement of any patent or copyright in respect of the same. The Employer shall be responsible for the Specification and Drawings.

6 Employer's Liabilities

6.1 Employer's Liabilities

In this Contract, Employer's Liabilities mean:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, within the Country,
- b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- c) riot, commotion or disorder by persons other than the Contractor's personnel and other employees, affecting the Site and/or the Works,

- d) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly, except to the extent to which the Contractor may be responsible for the use of any radio-active material,
- e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- f) use or occupation by the Employer of any part of the Works, except as may be specified in the Contract,
- g) design of any part of the Works by the Employer's personnel or by others for whom the Employer is responsible, and
- h) any operation of the forces of nature affecting the Site and/or the Works, which was unforeseeable or against which an experienced contractor could not reasonably have been expected to take precautions.
- i) Force Majeure,
- j) a suspension under Sub-Clause 2.3 unless it is attributable to the Contractor's failure,
- k) any failure of the Employer,
- l) physical obstructions or physical conditions other than climatic conditions, encountered on the Site during the performance of the Works, which obstructions or conditions were not reasonably foreseeable by an experienced contractor and which the Contractor immediately notified to the Employer,
- m) any delay or disruption caused by any Variation,
- n) any change to the law of the Contract after the date of the Contractor's offer as stated in the Agreement,
- o) losses arising out of the Employer's right to have the permanent work executed on, over, under, in or through any land, and to occupy this land for the permanent work, and
- p) damage which is an unavoidable result of the Contractor's obligations to execute the Works and to remedy any defects.

7 Time for Completion

7.1 Execution of the Works

The Contractor shall commence the Works on the Commencement Date and shall proceed expeditiously and without delay and shall complete the Works within the Time for Completion.

7.2 Programme

Within the time stated in the Appendix, the Contractor shall submit to the Employer a programme for the Works in the form stated in the Appendix.

7.3 Extension of Time

Subject to Sub-Clause 10.3, the Contractor shall be entitled to an extension to the Time for Completion if he is or will be delayed by any of the Employer's Liabilities.

On receipt of an application from the Contractor, the Employer shall consider all supporting details provided by the Contractor and shall extend the Time for Completion as appropriate.

7.4 Late Completion

If the Contractor fails to complete the Works within the Time for Completion, the Contractor's only liability to the Employer for such failure shall be to pay the amount stated in the Appendix for each day for which he fails to complete the Works.

8 Taking-Over

8.1 Completion

The Contractor may notify the Employer when he considers that the Works are complete.

8.2 Taking-Over Notice

The Employer shall notify the Contractor when he considers that the Contractor has completed the Works stating the date accordingly. Alternatively, the Employer may notify the Contractor that the Works, although not fully complete, are ready for taking over, stating the date accordingly.

The Employer shall take over the Works upon the issue of this notice. The Contractor shall promptly complete any outstanding work and, subject to Clause 9, clear the Site.

9 Remedying Defects

9.1 Remedying Defects

The Employer may at any time prior to the expiry of the period stated in the Appendix, notify the Contractor of any defects or outstanding work. The Contractor shall remedy at no cost to the Employer any defects due to the Contractor's design, Materials, Plant or workmanship not being in accordance with the Contract.

The cost of remedying defects attributable to any other cause shall be valued as a Variation. Failure to remedy any defects or complete outstanding work within a reasonable time of the Employer's notice shall entitle the Employer to carry out all necessary work at the Contractor's cost.

9.2 Uncovering and Testing

The Employer may give instruction as to the uncovering and/or testing of any work. Unless as a result of any uncovering and/or testing it is established that the Contractor's design, Materials, Plant or workmanship are not in accordance with the Contract, the Contractor shall be paid for such uncovering and/or testing as a Variation in accordance with Sub-Clause 10.2.

10 Variations and Claims

10.1 Right to Vary

The Employer may instruct Variations.

10.2 Valuation of Variations

Variations shall be valued as follows:

- a) at a lump sum price agreed between the Parties, or
- b) where appropriate, at rates in the Contract, or
- c) in the absence of appropriate rates, the rates in the Contract shall be used as the basis for valuation, or failing which
- d) at appropriate new rates, as may be agreed or which the Employer considers appropriate, or
- e) if the Employer so instructs, at daywork rates set out in the Appendix for which the Contractor shall keep records of hours of labour and Contractor's Equipment, and of Materials used.

10.3 Early Warning

A Party shall notify the other as soon as he is aware of any circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment. The Contractor shall take all reasonable steps to minimise these effects.

The Contractor's entitlement to extension to the Time for Completion or additional payment shall be limited to the time and payment which would have been due if he had given prompt notice and had taken all reasonable steps.

10.4 Right to Claim

If the Contractor incurs Cost as a result of any of the Employer's Liabilities, the Contractor shall be entitled to the amount of such Cost. If as a result of any of the Employer's Liabilities, it is necessary to change the Works, this shall be dealt with as a Variation.

10.5 Variation and Claim Procedure

The Contractor shall submit to the Employer an itemised make-up of the value of Variations and claims within 28 days of the instruction or of the event giving rise to the claim. The Employer shall check and if possible agree the value. In the absence of agreement, the Employer shall determine the value.

11 Contract Price and Payment

11.1 Valuation of the Works

The Works shall be valued as provided for in the Appendix, subject to Clause 10.

11.2 Monthly Statements

The Contractor shall be entitled to be paid at monthly intervals:

- a) the value of the Works executed,
- b) the percentage stated in the Appendix of the value of Materials and Plant delivered to the Site at a reasonable time, subject to any additions or deductions which may be due.

The Contractor shall submit each month to the Employer a statement showing the amounts to which he considers himself entitled.

11.3 Interim Payments

Within 28 days of delivery of each statement, the Employer shall pay to the Contractor the amount shown in the Contractor's statement less retention at the rate stated in the Appendix, and less any amount for which the Employer has specified his reasons for disagreement. The Employer shall not be bound by any sum previously considered by him to be due to the Contractor.

The Employer may withhold interim payments until he receives the performance security under Sub-Clause 4.4 (if any).

11.4 Payment of First Half of Retention

One half of the retention shall be paid by the Employer to the Contractor within 14 days after issuing the notice under Sub-Clause 8.2.

11.5 Payment of Second Half of Retention

The remainder of the retention shall be paid by the Employer to the Contractor within 14 days after either the expiry of the period stated in the Appendix, or the remedying of notified defects or the completion of outstanding work, all as referred to in Sub-Clause 9.1, whichever is the later.

11.6 Final Payment

Within 42 days of the latest of the events listed in Sub-Clause 11.5 above, the Contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the final contract value.

Within 28 days after the submission of this final account, the Employer shall pay to the Contractor any amount due. If the Employer disagrees with any part of the Contractor's final account, he shall specify his reasons for disagreement when making payment.

11.7 Currency

Payment shall be in the currency stated in the Appendix.

11.8 Delayed Payment

The Contractor shall be entitled to interest at the rate stated in the Appendix for each day the Employer fails to pay beyond the prescribed payment period.

12 Default

12.1 Default by Contractor

If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the Employer or fails to proceed expeditiously and without delay, or is, despite a written complaint, in breach of the Contract, the Employer may give notice referring to this Sub-Clause and stating the default.

If the Contractor has not taken all practicable steps to remedy the default within 14 days after the Contractor's receipt of the Employer's notice, the Employer may by a second notice given within a further 21 days, terminate the Contract. The Contractor shall then demobilise from the Site leaving behind Materials and Plant and any Contractor's Equipment which the Employer instructs in the second notice is to be used until the completion of the Works.

12.2 Default by Employer

If the Employer fails to pay in accordance with the Contract, or is, despite a written complaint, in breach of the Contract, the Contractor may give notice referring to this Sub-Clause and stating the default. If the default is not remedied within 7 days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works.

If the default is not remedied within 28 days after the Employer's receipt of the Contractor's notice, the Contractor may by a second notice given within a further 21 days, terminate the Contract. The Contractor shall then demobilise from the Site.

12.3 Insolvency

If a Party is declared insolvent under any applicable law, the other Party may by notice terminate the Contract immediately. The Contractor shall then demobilise from the Site leaving behind, in the case of the Contractor's insolvency, any Contractor's Equipment which the Employer instructs in the notice is to be used until the completion of the Works.

12.4 Payment upon Termination

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- a) any sums to which the Contractor is entitled under Sub-Clause 10.4,
- b) any sums to which the Employer is entitled,
- c) if the Employer has terminated under Sub-Clause 12.1 or 12.3, the Employer shall be entitled to a sum equivalent to 20% of the value of those parts of the Works not executed at the date of the termination,
- d) if the Contractor has terminated under Sub-Clause 12.2 or 12.3, the Contractor shall be entitled to the Cost of his suspension and demobilisation together with a sum equivalent to 10% of the value of those parts of the Works not executed at the date of termination.

The net balance due shall be paid or repaid within 28 days of the notice of termination.

13 Risk and Responsibility

13.1 Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works from the Commencement Date until the date of the Employer's notice under Sub-Clause 8.2. Responsibility shall then pass to the Employer. If any loss or damage happens to the Works during the above period, the Contractor shall rectify such loss or damage so that the Works conform with the Contract.

Unless the loss or damage happens as a result of an Employer's Liability, the Contractor shall indemnify the Employer, the Employer's contractors, agents and employees against all loss or damage happening to the Works and against all claims or expense arising out of the Works caused by a breach of the Contract, by negligence or by other default of the Contractor, his agents or employees.

13.2 Force Majeure

If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately. If necessary, the Contractor shall suspend the execution of the Works and, to the extent agreed with the Employer, demobilise the Contractor's Equipment.

If the event continues for a period of 84 days, either Party may then give notice of termination which shall take effect 28 days after the giving of the notice.

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- a) any sums to which the Contractor is entitled under Sub-Clause 10.4,
- b) the Cost of his suspension and demobilisation,
- c) any sums to which the Employer is entitled.

The net balance due shall be paid or repaid within 28 days of the notice of termination.

14 Insurance

14.1 Extent of Cover

The Contractor shall, prior to commencing the Works, effect and thereafter maintain insurances in the joint names of the Parties:

- a) for loss and damage to the Works, Materials, Plant and the Contractor's Equipment,
- b) for liability of both Parties for loss, damage, death or injury to third parties or their property arising out of the Contractor's performance of the Contract, including the Contractor's liability for damage to the Employer's property other than the Works, and
- c) for liability of both Parties and of any Employer's representative for death or injury to the Contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their employees.

14.2 Arrangements

All insurances shall conform with any requirements detailed in the Appendix. The policies shall be issued by insurers and in terms approved by the Employer. The Contractor shall provide the Employer with evidence that any required policy is in force and that the premiums have been paid.

All payments received from insurers relating to loss or damage to the Works shall be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

14.3 Failure to Insure

If the Contractor fails to effect or keep in force any of the insurances referred to in the previous Sub-Clauses, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor.

15 Resolution of Disputes

15.1 Adjudication

Unless settled amicably, any dispute or difference which arises between the Contractor and the Employer out of or in connection with the Contract, including any valuation or other decision of the Employer, shall be referred by either Party to adjudication in accordance with the attached Rules for Adjudication ("the Rules"). The adjudicator shall be any person agreed by the Parties. In the event of disagreement, the adjudicator shall be appointed in accordance with the Rules.

15.2 Notice of Dissatisfaction

If a Party is dissatisfied with the decision of the adjudicator or if no decision is given within the time set out in the Rules, the Party may give notice of dissatisfaction referring to this Sub-Clause within 28 days of receipt of the decision or the expiry of the time for the decision. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties. If notice of dissatisfaction is given within the specified time, the decision shall be binding on the Parties who shall give effect to it without delay unless and until the decision of the adjudicator is revised by an arbitrator.

15.3 Arbitration

A dispute which has been the subject of a notice of dissatisfaction shall be finally settled by a single arbitrator under the rules specified in the Appendix. In the absence of agreement, the arbitrator shall be designated by the appointing authority specified in the Appendix. Any hearing shall be held at the place specified in the Appendix and in the language referred to in Sub-Clause 1.5.

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Particular Conditions

3.2 Employer's Representatives

Replace the final sentence of Sub-Clause 3.2 with the following: "The Employer's Representative shall exercise in a fair and impartial manner the powers of the Employer under or in connection with the following Sub-Clauses: 1.3, 2.3, 4.2, 4.3, 5.1, 7.3, 8.2, 9.1, 9.2, 10.1, 10.2, 10.5, 11.1 to 11.6, 11.8, 12.1, 13.2 and 14.1.

4.2 Contractor's Representative

Add after the final sentence to Sub-Clause 4.2 the following: "The contractor must provide under his employment the following key personnel for the whole duration of the Contract:

1. Contractor's Architect & Civil Engineer

- Qualified from a recognised University (minimum MQF Level 6) and warranted as per Chapter 390 (Periti Act) of the Laws of Malta.
- To act as the Contractor's Representative.
- To fulfil the role of the Site Technical Officer as outlined in S.L. 623.06 (Avoidance of Damage to Third Party Property Regulations) for demolition, excavation and building works of all the project.
- To fulfil the role of the Site Manager as outlined in **S.L. 623.08 (Construction Management Site Regulations)**
- To act as temporary works co-ordinator as per specification clause C30/180 Temporary works co-ordinator.
- To design and to certify the Catechism Wing façade retention structure as per specification clause C30/210 Retention structure - contractor designed.
- To prepare bar bending schedules for all reinforced concrete elements as per specification clause E05/215 Contractor's structural detailing of reinforcement.
- To design and to certify all formwork as per specification clause E20/110 Loadings.

2. Master Mason

- Licensed Mason responsible for undertaking the works in terms of Article 1638 of the Civil Code of the Laws of Malta, and in terms of the Code of Police Laws.
- To continuously supervise and check the execution and workmanship of all the works in line with the specification."

11 Contract Price and Payment

11.3 Interim Payments

Replace Sub-Clause 11.3 with the following:

"Within 21 days of delivery of each statement, the Employer's representative A10/140 Architect/Contractor Administrator, must check the Contractor's statement and issue an Interim Certificate for Payment, less retention at the rate stated in the Appendix, and less any amount for which the Employer's representative has specified his reasons for disagreement. The Employer's representative shall not be bound by any sum previously considered by him to be due to the Contractor. The Employer shall pay to the Contractor the amount shown in the Interim Certificate for Payment within 21 days of delivery of each Certificate."

11.6 Final Payment

Replace Sub-Clause 11.6 with the following:

"Within 42 days of the latest of the events listed in Sub-Clause 11.5 above, the Contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer's Representative A10/140 Architect/Contractor Administrator to ascertain the final contract value.

Within 28 days after the submission of this final account, the Employer's representative A10/140 Architect/Contractor Administrator, must check the Contractor's final account and issue a Final Certificate for Payment, less retention at the rate stated in the Appendix, and less any amount for which the Employer's representative has specified his reasons for disagreement.

The Employer shall pay to the Contractor any amount as shown in the Final Certificate for Payment within 21 days of delivery of the Certificate."

Following Sub-Clause 11.8 and the following Sub-Clause:

"11.9 Fees related to the issuance of each Certificate for Payment

The Contractor must pay the Employer's Representative A10/140 Architect/Contractor Administrator, the amount of 1% of the value of the works certified in each Certificate for Payment issued by the Employer's Representative within 21 days of delivery of each Certificate."

Rules for Adjudication

referred to in Sub-Clause 15.1

General

1 Any reference in the Conditions of Contract to the Rules for Adjudication shall be deemed to be a reference to these Rules.

2 Definitions in the Contract shall apply in these Rules.

Appointment of Adjudicator

3 The Parties shall jointly ensure the appointment of the Adjudicator. The Adjudicator shall be a suitably qualified person.

4 If for any reason the appointment of the Adjudicator is not agreed at the latest within 14 days of the reference of a dispute in accordance with these Rules, then either Party may apply, with a copy of the application to the other Party, to any appointing authority named in the Contract or, if none, to the President of FIDIC or his nominee, to appoint an Adjudicator, and such appointment shall be final and conclusive.

5 The Adjudicator's appointment may be terminated by mutual agreement of the Parties. The Adjudicator's appointment shall expire when the Works have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.

Terms of Appointment

6 The Adjudicator is to be, and is to remain throughout his appointment, impartial and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he becomes aware which could affect his impartiality or independence.

7 The Adjudicator shall not give advice to the Parties or their representatives concerning the conduct of the project of which the Works form part other than in accordance with these Rules.

8 The Adjudicator shall not be called as a witness by the Parties to give evidence concerning any dispute in connection with, or arising out of, the Contract.

9 The Adjudicator shall treat the details of the Contract and all activities and hearings of the Adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The Adjudicator shall not, without the consent of the Parties, assign or delegate any of his work under these Rules or engage legal or technical assistance.

10 The Adjudicator may resign by giving 28 days' notice to the Parties. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of Adjudicator under these Rules, the Parties shall agree upon a replacement Adjudicator within 14 days or Rule 4 shall apply.

11 The Adjudicator shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the Adjudicator's duties unless the act or omission is shown to have been in bad faith.

12 If the Adjudicator shall knowingly breach any of the provisions of Rule 6 or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the Adjudicator are rendered void or ineffective.

Payment

13 The Adjudicator shall be paid the fees and expenses set out in the Adjudicator's Agreement.

14 The retainer fee, if applicable, shall be payment in full for:

- (a) being available, on 28 days' notice, for all hearings and Site visits;
- (b) all office overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties;
- (c) all services performed hereunder except those performed during the days referred to in Rule 15.

15 The daily fee shall be payable for each working day preparing for or attending Site visits or hearings or preparing decisions including any associated travelling time.

16 The retainer and daily fees shall remain fixed for the period of tenure of the Adjudicator.

17 All payments to the Adjudicator shall be made by the Contractor who will be entitled to be reimbursed half by the Employer. The Contractor shall pay invoices addressed to him within 28 days of receipt. The Adjudicator's invoices for any monthly retainer shall be submitted quarterly in advance and invoices for daily fees and expenses shall be submitted following the conclusion of a Site visit or hearing. All invoices shall contain a brief description of the activities performed during the relevant period. The Adjudicator may suspend work if any invoice remains unpaid at the expiry of the period for payment, provided that 7 days prior notice has been given to both Parties.

18 If the Contractor fails to pay an invoice addressed to it, the Employer shall be entitled to pay the sum due to the Adjudicator and recover the sum paid from the Contractor.

Procedure for Obtaining

19 A dispute between the Parties may be referred in writing by either Party to the Adjudicator for his decision, with a copy to the other Party. If the Adjudicator has not been agreed or appointed, the dispute shall be referred in writing to the other Party, together with a proposal for the appointment of an Adjudicator. A reference shall identify the dispute and refer to these Rules.

20 The Adjudicator may decide to visit the Site. The Adjudicator may decide to conduct a hearing in which event he shall decide on the date, place and duration for the hearing. The Adjudicator may request that written statements from the Parties be presented to him prior to, at or after the hearing. The Parties shall promptly provide the Adjudicator with sufficient copies of any documentation and information relevant to the Contract that he may request.

21 The Adjudicator shall act as an impartial expert, not as an arbitrator, and shall have full authority to conduct any hearing as he thinks fit, not being bound by any rules or procedures other than those set out herein. Without limiting the foregoing, the Adjudicator shall have power to:

- (a) decide upon the Adjudicator's own jurisdiction, and as to the scope of any dispute referred to him,
- (b) make use of his own specialist knowledge, if any,
- (c) adopt an inquisitorial procedure,
- (d) decide upon the payment of interest in accordance with the Contract,
- (e) open up, review and revise any opinion, instruction, determination, certificate or valuation, related to the dispute,
- (f) refuse admission to hearings to any persons other than the Employer, the Contractor and their respective representatives, and to proceed in the absence of any Party who the Adjudicator is satisfied received notice of the hearing.

22 All communications between either of the Parties and the Adjudicator and all hearings shall be in the language of the Adjudicator's Agreement. All such communications shall be copied to the other Party

23 No later than the fifty-sixth day after the day on which the Adjudicator received a reference or, if later, the day on which the Adjudicator's Agreement came into effect, the Adjudicator shall give written notice of his decision to the Parties. Such decision shall include reasons and state that it is given under these Rules.

Adjudicator's Agreement

Identification of Project:

Redevelopment of Oratorju Qalb ta' Ġesù - Phase 1 Civil Works
(the "Project")

Name and address of the Employer:

Mosta Parish with office at Uffiċċju Parrokkjali, 1, Triq il-Bażilika, Il-Mosta
(the "Employer")

Name and address of Contractor:

(the "Contractor")

Name and address of Adjudicator:

(the "Adjudicator")

Whereas the Employer and the Contractor have entered into a contract ("the Contract") for the execution of the Project and wish to appoint the Adjudicator to act as adjudicator in accordance with the Rules for Adjudication ["the Rules"].

The Employer, Contractor and Adjudicator agree as follows:

1. The Rules and the dispute provisions of the Contract shall form part of this Agreement.

2. The Adjudicator shall be paid:

A retainer fee of _____ per calendar month
(where applicable)

A daily fee of _____

Expenses (including the cost of telephone calls, courier charges, faxes and telexes incurred in connection with his duties; all reasonable and necessary travel expenses, hotel accommodation and subsistence and other direct travel expenses).

Receipts will be required for all expenses.

3. The Adjudicator agrees to act as adjudicator in accordance with the Rules and has disclosed to the Parties any previous or existing relationship with the Parties or others concerned with the Project.

4. This Agreement shall be governed by the law of Malta

5. The language of this Agreement shall be English

SIGNED BY _____

for and on behalf of the Employer in the presence of

Witness _____

Name _____

Address _____

Date _____

SIGNED BY _____

for and on behalf of the Contractor in the presence of

Witness _____

Name _____

Address _____

Date _____

SIGNED BY _____

for and on behalf of the Adjudicator in the presence of

Witness _____

Name _____

Address _____

Date _____